

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0334V

ROBERT LENHART,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 12, 2024

Andrew Donald Downing, Downing, Allison & Jorgenson, Phoenix, AZ , for Petitioner.

Benjamin Patrick Warder, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 8, 2021, Robert Lenhart filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) following an influenza vaccination he received on February 19, 2020. Petition at ¶¶ 1, 3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 23, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his SIRVA. On April 11, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$33,000.00 in pain and suffering. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$33,000.00 in pain and suffering in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

On January 8, 2021, Robert Lenhart (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act”), alleging that he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine that he received on February 19, 2020. ECF No. 1 at 1. On March 23, 2023, the Secretary of Health and Human Services (“respondent”) filed a combined motion to dismiss and Rule 4(c) report, in which he argued that petitioner had failed to demonstrate that he sustained a SIRVA. ECF No. 35. On March 29, 2023, petitioner filed a combined response to respondent’s motion to dismiss and a motion for a decision on the record, in which he requested that the Court deny respondent’s motion to dismiss and find that petitioner had established a claim for compensation for a SIRVA under the Vaccine Act. ECF No. 36. On April 28, 2023, respondent filed a combined reply to petitioner’s response to respondent’s motion to dismiss and a reply to petitioner’s motion for a decision on the record. ECF No. 38. On May 4, 2023, petitioner filed a reply in support of his motion for a decision on the record. ECF No. 39. On May 31, 2023,

petitioner filed a supplement to his response to respondent's motion to dismiss. ECF No. 40. On January 23, 2024, the Chief Special Master issued his Ruling on Entitlement, in which he found that petitioner was entitled to compensation. ECF No. 41.

I. Item of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$33,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following:¹ a lump sum payment of \$33,000.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Robert Lenhart: **\$33,000.00**

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

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